



# House of Representatives

General Assembly

**File No. 738**

January Session, 2009

Substitute House Bill No. 6339

*House of Representatives, April 20, 2009*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE FORFEITURE OF PROPERTY OBTAINED BY SECURITIES FRAUD.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective from passage*) (a) All moneys or property  
2       constituting, or derived from, the proceeds obtained, directly or  
3       indirectly, from a violation of section 36b-4 or 36b-5 of the general  
4       statutes shall be subject to forfeiture to the state pursuant to subsection  
5       (b) of this section.

6       (b) Not later than ninety days after the seizure of moneys or  
7       property subject to forfeiture pursuant to subsection (a) of this section,  
8       in connection with a lawful criminal arrest or a lawful search, the Chief  
9       State's Attorney or a deputy chief state's attorney, state's attorney or  
10      assistant or deputy assistant state's attorney may petition the court in  
11      the nature of a proceeding in rem to order forfeiture of such moneys or  
12      property. Such proceeding shall be deemed a civil suit in equity in  
13      which the state shall have the burden of proving all material facts by  
14      clear and convincing evidence. The court shall identify the owner of

15 such moneys or property and any other person as appears to have an  
16 interest therein, and order the state to give notice to such owner and  
17 any interested person by certified or registered mail. The court shall  
18 promptly, but not less than two weeks after such notice, hold a hearing  
19 on the petition, except that, for good cause shown, the court may delay  
20 the holding of such hearing. No testimony offered or evidence  
21 produced by such owner or interested person at such hearing and no  
22 evidence discovered as a result of or otherwise derived from such  
23 testimony or evidence may be used against such owner or interested  
24 person in any proceeding, except that no such owner or interested  
25 person shall be immune from prosecution for perjury or contempt  
26 committed while giving such testimony or producing such evidence.  
27 At such hearing, the court shall hear evidence and make findings of  
28 fact and enter conclusions of law and shall issue a final order from  
29 which the parties shall have such right of appeal as from a decree in  
30 equity.

31 (c) No moneys or property shall be forfeited under this section to  
32 the extent of the interest of an owner or lienholder by reason of any act  
33 or omission committed by another person if such owner or lienholder  
34 did not know and could not have reasonably known that such moneys  
35 or property was being used or was intended to be used in, or was  
36 derived from, criminal activity.

37 (d) Any property ordered forfeited pursuant to subsection (b) of this  
38 section shall be sold at public auction conducted by the Commissioner  
39 of Administrative Services or the commissioner's designee.

40 (e) The proceeds from any sale of property under subsection (d) of  
41 this section and any moneys forfeited under this section shall be  
42 applied: (1) To payment of the balance due on any lien preserved by  
43 the court in the forfeiture proceedings; (2) to payment of any costs  
44 incurred for the storage, maintenance, security and forfeiture of any  
45 such property; and (3) to payment of court costs. The balance, if any,  
46 shall be deposited in the securities fraud restitution account  
47 established under subsection (f) of this section.

48       (f) There is established a securities fraud restitution account which  
49 shall be a separate, nonlapsing account within the General Fund. The  
50 account shall contain any moneys required by law to be deposited in  
51 the account. The funds in the account shall be expended by the  
52 Department of Banking to make restitution to persons who have been  
53 victims of a violation of section 36b-4 or 36b-5 of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

**JUD**       *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Dpt of Banking - Fraud Restitution Account	BF - Revenue Gain	Potential	Potential
Dept. of Administrative Services; Criminal Justice, Div.	GF - None	None	None

Note: BF=Banking Fund; GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill establishes forfeiture procedures for money and property illegally obtained by certain crimes: CGS 36b-4 (fraud in sale of securities) and 36b-5 (illegal act by an investment advisor). On average, four convictions are obtained under CGS 36b-4 each year; there have been no convictions under 36b-5 over the past five fiscal years. Since there are few convictions each year, it is anticipated that any potential revenue gain under the bill would be minimal in most years but could be significant in any single year depending upon the magnitude of fraud committed and associated money and property gained.

There is no cost to state agencies to bring civil actions under the bill, sell forfeited property at auction and administer the non-lapsing account the bill establishes (the Securities Fraud Restitution Account).

#### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Judicial Department's Quarterly Criminal / Motor Vehicle Statutes File

**OLR Bill Analysis****sHB 6339*****AN ACT CONCERNING THE FORFEITURE OF PROPERTY  
OBTAINED BY SECURITIES FRAUD.*****SUMMARY:**

This bill establishes forfeiture procedures for money and property illegally obtained by (1) someone in connection with the offer, sale, or purchase of securities or (2) investment advisors and people who solicit business on their behalf (see BACKGROUND). It subjects to forfeiture money and property obtained or derived from illegal activities.

To forfeit the property, the bill requires a civil court proceeding with notice and a hearing and the state must prove all material facts by clear and convincing evidence. An owner or someone with an interest in the property can offer evidence and the court can protect his or her interests under certain circumstances. The court's decision can be appealed. Any forfeited money or the proceeds from forfeited property sold at auction is deposited into a securities fraud restitution account, which the bill creates. The Department of Banking can use money in the fund to pay restitution to victims of these crimes.

EFFECTIVE DATE: Upon passage

**COURT PROCEEDING**

Within 90 days of seizing money or property that is subject to forfeiture in connection with a lawful criminal arrest or search, the bill allows a prosecutor to petition the court to order forfeiture. The suit is an in rem proceeding (a proceeding against the property) that is a civil suit in equity. The bill establishes the following procedures:

1. the court must identify property owners and others that appear

to have an interest in the property and the state must notify them by certified or registered mail;

2. the court must hold a hearing within two weeks after the notice unless it delays the hearing for good cause;
3. the state must prove all material facts by clear and convincing evidence;
4. the court hears evidence, makes factual findings, reaches legal conclusions, and issues a final order; and
5. the parties can appeal the order as with a decree in equity.

The bill prohibits testimony or evidence offered by owners or interested persons at the hearing from being used against them in any proceeding. This also applies to evidence discovered as a result of or derived from their testimony or evidence. However, these individuals may be prosecuted for perjury or contempt based on their testimony or production of evidence.

The bill prohibits an owner's or lienholder's interest from being forfeited due to someone else's act or omission if the owner or lienholder did not know and could not have reasonably known that the money or property was (1) being used in, (2) intended to be used in, or (3) derived from, criminal activity.

#### **DISPOSITION OF FORFEITED PROPERTY**

The bill requires the administrative services commissioner or her designee to sell forfeited property at public auction. Forfeited money and the proceeds from any auction are used to pay (1) the balance due on any lien the court preserved (although the bill also provides that certain lienholder interests cannot forfeit); (2) storage, maintenance, security, and forfeiture costs; and (3) court costs. Any balance is deposited in the securities fraud restitution account which the bill creates as a separate, non-lapsing General Fund account. The Department of Banking uses the fund to pay restitution to victims of

securities fraud.

## **BACKGROUND**

### ***Prohibited Activities Regarding Offer, Sale, or Purchase of Securities***

The law prohibits anyone, in connection with the offer, sale, or purchase of a security, from directly or indirectly:

1. employing a device or scheme to defraud;
2. making an untrue statement of a material fact or omitting a material fact that is necessary to make the statements made not misleading, in light of the circumstances; and
3. engaging in acts, practices, or a course of business that is fraudulent or deceives anyone.

This is punishable by up to 10 years in prison, a fine of up to \$10,000, or both (CGS §§ 36b-4, -28)

The law also prohibits anyone, in connection with the offer, sale, or purchase of a security, from directly or indirectly engaging in dishonest or unethical practice. This is punishable by up to two years in prison, a fine of up to \$2,000, or both (CGS §§ 36b-4, -28).

### ***Prohibited Activities of Investment Advisors and People Soliciting Business for Them***

The law prohibits anyone from directly or indirectly receiving compensation for advising someone about the value of securities or their purchase or sale, through reports or otherwise, by:

1. employing a device or scheme to defraud;
2. making an untrue statement of a material fact or omitting a material fact that is necessary to make the statements made not misleading, in light of the circumstances; and
3. engaging in acts, practices, or a course of business that is a fraud or deceit of anyone.

The law prohibits anyone who directly or indirectly receives compensation as an investment advisor or for soliciting business for an investment advisor from engaging in dishonest or unethical practices.

This is punishable by up to 10 years in prison, a fine of up to \$10,000, or both (CGS §§ 36b-5, -28)

The law prohibits an investment advisor from having, entering into, extending, or renewing an investment advisory contract unless it is signed by the client and contains certain written disclosures. An investment advisor also cannot take or have custody of a client's securities or funds it is prohibited by a regulation or, absent a regulation, the advisor does not notify the banking commissioner.

The law prohibits someone who directly or indirectly receives compensation for soliciting advisory business for an investment advisor from:

1. employing a device or scheme to defraud;
2. making an untrue statement of a material fact or omitting a material fact that is necessary to make the statements made not misleading, in light of the circumstances; and
3. engaging in acts, practices, or a course of business that is a fraud or deceit of anyone.

This is punishable by up to two years in prison, a fine of up to \$2,000, or both (CGS §§ 36b-5, -28).

### ***Related Law—Seizure of Property as Nuisance***

The law provides similar procedures to those in the bill to allow the state to seize property believed to be possessed, controlled, designed, or intended for use or which is, has been, or may be used as a means of committing a crime. The property must have been seized as a result of a lawful search or arrest and the state must claim it is a nuisance. Under these forfeiture provisions, money or property is destroyed or given to a charitable or educational institution or government agency



or institution. Money or proceeds from auctioning property go to the General Fund.

Other forfeiture provisions apply to property related to violations of the drug laws.

***Related Bill***

sSB 6671, favorably reported by the Judiciary Committee, establishes forfeiture procedures for (1) property used or intended to be used to commit or facilitate commission of various exploitation crimes, primarily involving children; (2) money used or intended for use in violation of the crimes; (3) the direct and indirect crime proceeds; and (4) property derived from the proceeds.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (03/31/2009)